REPLY BRIEF FOR THE APPELLANTS TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

IN THE

Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

v.

LARS FORSSENIUS, ET AL.

Appeal from the United States District Court For the Eastern District of Virginia

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February 17, 1965

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PRELIMINARY STATEMENT

The Brief for the United States as Amicus Curiae, filed January 20, 1965, recognizes that the argument of the Appellees and the holding of the court below are clearly erroneous insofar as they seek to declare the Statutes Involved invalid as to Presidential elections on the basis of Article I, § 2, and the Seventeenth Amendment to the Constitution of the United States. With respect to Congressional elections, the Amicus Brief simply deplores the fact that all of the arguments presented by both parties, and the opinion of the court below, deal with the basic issue of what constitutes a *qualification* for federal electors within the meaning of Article I, § 2, and the Seventeenth Amendment. This

issue, says the Government, is so basic and so far-reaching that it should be ignored by this Court. (Amicus Brief, p. 7).

Instead this Court is urged to declare the Statutes Involved invalid on the basis of the Twenty-fourth Amendment alone. This approach not only creates an entirely new issue in these cases, but also advocates an extension of the prohibition of the Twenty-fourth Amendment to a degree never contemplated by its framers.

Accordingly, the Appellants are compelled to answer fully the arguments contained in the Amicus Brief.

ARGUMENT

The Statutes Involved Do Not Violate the Twenty-fourth Amendment

A. The Nature of the Government's Argument and its Effect Upon Virginia's Election Laws.

The argument of the United States, as the Appellants understand it, is essentially to the effect that Virginia, because of the ratification of the Twenty-fourth Amendment, is now powerless to deal in any manner with any of the practical problems arising out of the impact of the Amendment upon her election laws—because any attempt, no matter how reasonable or necessary, to cope with such problems, is ipso facto a "penalty," an "onerous procedural requirement," or "a device which effectively subverts" the Twenty-fourth Amendment. This construction of the Amendment, the Appellants submit, is not supportable in law, in logic or in the record.

As the Appellants have previously noted (Brief for the Appellants, pages 3-4), the Twenty-fourth Amendment gave rise to serious procedural and practical problems in Virginia. One such problem, and Virginia's approach to it,

form the crux of the issue presently before the Court. This problem, of course, was finding some simple means by which those exempt from payment of the poll tax could declare their continuing state and local residence which is required for voting in all elections. Voluntary poll tax payment, which had since 1902 been the traditional means of proving residence, could no longer be required of any voter in federal elections after ratification of the Twenty-fourth Amendment; likewise substantial numbers of Virginia voters in the armed services were exempt during their period of service from all poll tax payments by virtue of Article XVII of the Constitution of Virginia, adopted in 1945 and amended in 1960. Virginia's approach to the problem of providing all exempt voters who choose to rely upon their exemptions with an alternate method of proving residence is found in *Va. Code* § 24-17.2, which provides for the certificate of residence.

It is unfortunate, but understandable, that the Government has joined the lower court and the Appellees in denying the legislative history of the Statutes Involved (R. 76-77, 85, 97) which is the only evidence in the record as to the probative value of poll tax payment in Virginia. Amicus Brief, page 13 and note 11.[1]

[1] The Government's denial is particularly remarkable in view of the reliance it places in its Brief in several instances upon the testimony of a delegation of Virginians speaking in opposition to the amendment to S. J. Res. 29, 87th Cong., 2d Sess. (1962), which eventually became the Twenty-fourth Amendment. *Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 87th Cong., 2d Sess., ser. 25 (1962) (hereinafter cited as "*Hearings*") at 73-102. Judge William Old, a member of that delegation, stated, *id.* at 81:

> The poll tax payment required in Virginia . . . enables Virginia to avoid the burdensome necessity for annual registration. The simplicity of this system is very apparent. Once having registered at his precinct the voter is permanently qualified to vote provided he has paid either personally or by mail, his poll tax assessment of $1.50 to the county or city treasurer of the subdivision wherein he resides. If he moves from one precinct to another or from one

The Appellants have already shown that even if the record needed independent substantiation, it may be found in quantity both in the law generally and particularly in the law of Virginia relating to assessment with and payment of poll taxes. See Brief for the Appellants, pages 17-24. This argument need not be repeated here.

But according to the Government, the Twenty-fourth Amendment means that Virginia is without power to provide any substitute method of proving residence, whether or not it is reasonable, because "no 'equivalent,' or milder 'substitute' [for any of the aspects of poll tax payment] is permissible" thereunder, and every such substitute method

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political subdivision to another he simply requests a transfer of registration to his new precinct. The local treasurer prints a list of all persons paying the poll tax which is placed in the hands of the election officials at each precinct. *The assessment and payment of poll taxes constitutes proof of residence and citizenship.* We in Virginia would be reluctant to give up this simplified system, which has kept us remarkably free from all taints of election frauds. . . . (Emphasis added).

Likewise, Attorney General Button testified, *id.* at 99:

> In States that have neither poll taxes nor yearly registration requirements, the problem is evident: a citizen may register in one locality, then move to another locality and register again. He could vote in each locality, unless the State employed a vast number of investigators to determine the continuing legality of each voter's registration.
>
> In Virginia the problem is largely solved by the poll tax. A man votes where he pays his poll tax. If he moves from one locality to another, he simply transfers his registration, pays his poll tax in the new locality, and votes. Since he would not have paid the poll tax in the locality of his former residence, he could not vote there. No doubt there is some possibility for error in the system, but it is a simple and effective system. The citizens of Virginia are satisfied with it and believe it to be the best available system.

This testimony, reference to which is so conveniently omitted by the United States when it undertakes to deny the record in these cases, certainly does not contradict the legislative history of the Statutes Involved but obviously supports it in every particular.

is an "abridgment" prohibited by the Amendment. Amicus Brief, pages 9, 11.

Following the Government's argument to its logical end, the Twenty-fourth Amendment means that any reasonable requirement enacted to fill the evidentiary void left by abolition of the poll tax is unconstitutional as applied to the federal voter.

Thus, if Virginia should by amendment of her own Constitution, do away entirely with the poll tax requirement, but should simultaneously enact either a statute requiring every voter to reaffirm his residence annually by filing a certificate, or a statute requiring that non-voters be struck from the registration rolls (either of which would be a necessity if the system of permanent registration were not jettisoned at the same time), either statutory requirement in the Government's view would be unconstitutional as applied to the federal voter since it would perform, in lieu of poll tax payment, the residence-proving function previously performed by such payment. Or suppose that by such constitutional amendment Virginia should do away with the residence qualification, but should instead add a property ownership qualification applicable to all voters.[2] The Government would again say that the Twenty-fourth Amendment is violated, since the federal voter's ownership of property would serve as evidence of residence within the

[2] Property ownership qualifications were common during the 18th and early 19th centuries, but have since largely been discarded by the states. Presumably such qualifications may still be applied to all voters by amendment of a state constitution. Senator Spessard Holland, the chief proponent of the Twenty-fourth Amendment, originally proposed that S. J. Res. 29 be amended by substitution of the language of S. J. Res. 58, 87th Cong., 1st Sess. (1961), which contained a provision abolishing such qualifications. See 108 Cong. Rec. 4185 (1962) (Senator Holland); *id.* at 4575 (Senator Johnston, quoting text of first proposed amendment). But the amendment actually offered by him (which became the Twenty-fourth Amendment) eliminated this provision. 108 Cong. Rec. 5042-43, 5074 (1962).

state and community, would thus be in lieu of poll tax payment, and therefore unlawful. Or suppose Virginia, under the pressure of the Twenty-fourth Amendment, should do away with both the poll tax requirement and the permanent registration system, and should instead enact a constitutional amendment providing for an annual registration of voters. Since poll tax payment presently functions effectively as an annual registration, would this, too, be attacked as a poll tax "substitute"? Other examples of the absurd and impractical results that would ensue from adoption of the inflexible doctrine contended for by the Government may be imagined, but those cited above should suffice to show why it should be rejected.

B. The Effect of the Government's Argument Upon the Election Laws of Other States.

The Government's doctrine would have drastic effects upon the election laws of at least two other states in which poll tax payment has had the same dual function it has had in Virginia. Neither Arkansas nor Texas, prior to 1963, had any voter registration laws whatever. As Senator Tower remarked during the debates on the Senate Joint Resolution which eventually became the Twenty-fourth Amendment, payment of poll taxes in Texas traditionally served as evidence of residence, 108 Cong. Rec. 4658-59 (1962); and in both states, the list of poll tax payers served as a registration list. *Hearings before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary*, 87th Cong., 1st Sess., pt. 5, at 1000, 1050 (1962); see also 108 Cong. Rec. 4883-88, 4893 (1962) (remarks of Senator McClellan). When ratification of the Twenty-fourth Amendment became imminent, both states, recognizing the necessity for meeting the obvious problems presented by it, responded similarly.

The Arkansas legislature, shortly after the Amendment was ratified, enacted a statute abolishing poll tax payment as a voter qualification in all elections and simultaneously establishing an annual voter registration law applicable to voters in all elections. Ark. Acts 1963 1st Ex. Sess., Act 19.[3] This statute was held to violate the Arkansas constitution insofar as it purported to abolish poll tax payment as a voter qualification for state elections, but was upheld in all other respects in *Faubus* v. *Miles,* 377 S.W. 2d 601 (Ark. 1964).

Likewise, in 1963, the Texas legislature submitted to the citizens of Texas an amendment to the Texas Constitution abolishing poll tax payment as a voter qualification in all elections. Tex. Acts 1963, S.J.R. 1, at 1797. At the same time, it enacted an annual voter registration law the effectiveness of which was contingent upon approval of the state constitutional amendment in a popular referendum, and a law requiring nonpayers of the poll tax in federal elections to obtain annually a poll tax receipt marked "poll taxes not paid," the effectiveness of which was contingent upon rejection of the Texas constitutional amendment and ratification of the Twenty-fourth Amendment to the U. S. Constitution. Tex. Acts 1963, ch. 430, at 1103. The Texas voters rejected the proposed amendment to the Texas Constitution; the Twenty-fourth Amendment was ratified. Thus, the second contingent law referred to above is presently in effect. *Tex. Election Code,* Art. 5.02a (Supp. 1964).[4]

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[3] The preamble to this Act reads in part:

> "... [I]t is the consensus of the General Assembly that the adoption of Amendment No. 24 to the Constitution of the United States makes it necessary to establish a system of voter registration in this State.

[4] The Texas statute is to be distinguished from the Mississippi statute held unconstitutional in *Gray* v. *Johnson,* 234 F. Supp. 743 (S.D. Miss. 1964). Both statutes, it is true, require a voter exempted from poll tax payment by the Twenty-fourth Amendment to obtain a

The result of events in Arkansas and Texas is that the prospective voter in federal elections who does not pay his poll taxes must register in Arkansas and obtain a specially marked poll tax receipt in Texas. The requirements of both states are manifestly in lieu of poll tax payment in federal elections. But such requirements are also needed to prevent election frauds, for without them, there will be no objective evidence at all—not even the appearance of the prospective voter's name on an outdated registration list—from which election officers can determine whether or not such voter is a qualified resident. Yet the Government would presumably argue, as it presently argues against the Statutes Involved, that the requirements are invalid under the Twenty-fourth Amendment merely because they are substitutes for the poll tax, notwithstanding that they are justifiable by a necessity and calculated reasonably to cope with it.

C. The Government's Argument Distorts the Obvious Intent of the Twenty-fourth Amendment.

The elementary principles of construction of the Twenty-fourth Amendment are clear. "[T]he intention of the Congress which framed and of the States which adopted this Amendment of the Constitution must be sought in the words of the Amendment." *United States* v. *Wong Kim Ark*, 169

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distinctively marked poll tax receipt. But the Texas Election Code requires voters exempted by state law to obtain an exemption certificate substantially identical to the poll tax receipt for every election in which they may seek to vote, see *Tex. Election Code*, Art. 5.16 (1952), whereas in Mississippi, as the *Gray* court took care to point out, a voter exempted by state law needed only to obtain an exemption certificate once, and the certificate would suffice for all elections held thereafter. This is a critical distinction, for it shows that the Texas statute does not belie its purpose—*all* exempted voters must prove their qualifications, no matter from what law they may derive their exemption.

U.S. 649, 699 (1898). "[I]n the construction of the language of the Constitution . . . . we are to place ourselves as nearly as possible in the condition of the men who framed that instrument." *Ex parte Bain,* 121 U.S. 1, 12 (1887).

The language of the Twenty-fourth Amendment shows that its single, explicit purpose was to eliminate payment of a poll tax or other tax as a direct condition of the right to vote in federal elections. Surely, if Congress had intended the Twenty-fourth Amendment to have the drastic effect attributed to it by the Government, it would have said so explicitly. But a fair reading of the legislative history of the Twenty-fourth Amendment fails to reveal anywhere that the Amendment was intended to render the states in which payment of the poll tax performed an essential residence-proving function impotent to provide a means of proving residence when poll tax payment could no longer be used as such. Rather, it shows that the concern of the proponents of the Amendment was solely with the tax as a tax, and all of the official references to "substitutes," when read in full context, are clearly references to substitute *taxes.*[5]

[5] *E.g.,* H. R. Rep. No. 1821, 87th Cong., 2d Sess. 5 (1962):

> The limitation proposed by this section . . . would also prevent both the United States and any State from setting up any substitute *tax* in lieu of a poll tax as a prerequisite for voting in primary elections for those specified Federal officials. This prevents nullification of the amendment's effect by a resort to subterfuge in the form of *other types of taxes.* (Emphasis added).

See also *Hearings, supra,* at 25 (statement of Senator Holland relating to anti-poll tax provisions of S.J. Res. 58 identical to those of amended S.J. Res. 29, which became the Twenty-fourth Amendment):

> Fourth, the proposed amendment would prohibit any *tax* other than the ordinary poll tax as we know it from being prescribed as a prerequisite for voting for elective Federal officials. (Emphasis added).

The same singleness of Congressional purpose was also characteristic of the Fifteenth Amendment, from which the form and language

To be sure, the Appellants do not suggest that a substitute of any nature whatever other than a tax is permissible under the Amendment; *Gray* v. *Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964), is answer enough to contentions of this kind. What the Appellants do suggest, however, is that this Court should repudiate the draconian interpretation of the Twenty-fourth Amendment urged in the Government's Amicus Brief, the harsh and unworkable consequences of which have previously been illustrated, and should instead adopt an interpretation more consistent with reason and practicality. Where, as here, the Twenty-fourth Amendment has made it impossible for a state to continue to employ the fact of poll tax payment in all cases as a means of proving continuing residence, and some means of proof is a practical

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of the Nineteenth and Twenty-fourth Amendments were derived. Many members of the Reconstruction Congress felt that the Amendment was faulty in this respect, and that an amendment establishing a uniform national standard ought to have been submitted to the states in its stead. *E.g.*, Cong. Globe, 40th Cong., 3d Sess., at 862 (1869) (remarks of Senator Warner). But this more extreme approach was rejected. See 2 *Story, Constitution* § 1972 (4th ed. Cooley 1873).

To emphasize the clear intent of the framers of the Twenty-fourth Amendment to limit its prohibition to *taxes only*, the language of the prohibition itself makes it obvious that failure to pay tax must itself deny, cut-off or deprive one of the right to vote before it is proscribed.

The phrase "denied or abridged" occurs in the Fifteenth, Nineteenth and Twenty-fourth Amendments, in each case referring to the same subject, i.e., the right to vote. The words "abridge," "abridging" or "abridged" also occur in the First and Fourteenth Amendments. When read in this constitutional context, the word "abridge" clearly means to "cut off," "curtail" or "deprive of" (see Webster's New International Dictionary, 2d Edition). This usage is preferable to "circumscribe or burden," which was the inexact definition concocted by the three-judge court in *Gray* v. *Johnson, supra*, 234 F. Supp. at 746, cited in note 8, pp. 9-10 of the Amicus Brief.

But, in any case, it is the failure to pay a *poll tax or other tax*—and nothing else—that is prohibited by the Twenty-fourth Amendment when it denies, abridges, cuts-off or curtails the right to vote.

necessity to its system of election law administration, the state should be permitted to establish a substitute means of proof, so long as the substitute chosen is neither extrinsically or intrinsically unreasonable.

D. Authorities Do Not Support the Government's Argument.

None of the cases cited by the Government precludes this Court from adopting the view suggested by the Appellants. *Frost & Frost Trucking Co.* v. *Railroad Comm'n,* 271 U.S. 582 (1926) and *Terral* v. *Burke Constr. Co.*, 257 U.S. 529 (1922), are cited to show that it is a "familiar principle" that the states are utterly powerless to condition the granting of a privilege upon the "waiver" of a constitutional right. Although factually both cases are distinguishable,[6] the Appellants must admit that there is some language in *Frost* that might conceivably support the principle argued by the Government. But if the language in *Frost* is to be taken as stating an absolute, it is difficult, if not impossible, to reconcile such language with the holdings of such cases as *Hess* v. *Pawloski,* 274 U.S. 352 (1927), and *Kane* v. *New Jersey,* 242 U.S. 160 (1916), to the effect that a state may validly require a non-resident motorist to surrender his constitutional right to personal service of process in *in personam* actions as a condition of the privilege of using its streets and highways. Moreover, as Mr. Justice Frankfurter

[6] In *Frost,* this Court, Holmes, Brandeis and McReynolds, JJ., dissenting, struck down a California statute requiring private carriers, as a condition of using the state's highways, to submit to regulation as public service corporations. In *Terral,* an Arkansas statute requiring foreign corporations, as a condition of qualifying to do business in the state, to forego their rights to resort to federal courts was likewise annulled.

observed in *Watson* v. *Employers Liab. Assur. Corp.*, 348 U.S. 66, 82 & n. 3 (1954) (Frankfurter, J., concurring), the "survival value" of *Frost* is limited in view of *Stephenson* v. *Binford*, 287 U.S. 251 (1932), which upheld a statute substantially identical to that invalidated in *Frost;* and in addition, the *Frost* opinion took no account of *Phoenix Oil Corp.* v. *Phoenix Ref. Co.*, 259 U.S. 125 (1922), in which subjection to a common carrier's duties was upheld as a condition of a foreign corporation's entry into the state.

Finally it is to be noted that in this Court's last term, where *Frost* was cited in support of the proposition that Congress could not condition the conduct of an interstate railroad business by a state upon the state's surrender of its constitutional immunity from suit by its own citizens, *Frost* was distinguished on the ground that "the condition [there] sought to be imposed was deemed by the Court to fall outside the scope of valid regulation." *Parden* v. *Terminal Ry.*, 377 U.S. 184, 193-94 n. 11 (1964). *Frost* thus interpreted is fully consonant with the view the Appellants urge this Court to take of the Twenty-fourth Amendment apropos of the Statutes Involved. Here, the only "condition" Virginia seeks to impose upon the right to vote of persons who do not pay their poll taxes is that they declare their residence qualifications—qualifications which their non-payment of such taxes leaves in doubt but which they have long been required to meet for all elections. Both residence qualifications, see *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45, 51 (1959), and requirements that some persons prove their residence qualifications, see *Pope* v. *Williams*, 193 U.S. 621 (1904), have been declared to be "conditions" that are within the power of the states to impose.

More closely in point, although likewise not in the least inconsistent with the Appellants' contentions, is *Lane* v.

Wilson, 307 U.S. 268 (1939), also cited by the Government. To understand *Lane*, reference must be made to *Guinn* v. *United States*, 238 U.S. 347 (1915). In *Guinn*, this Court held that an Oklahoma statute, which commenced by requiring all voters to be able to read and write, but ended by exempting from the literacy test thus imposed all lineal descendants of persons qualified to vote on January 1, 1866, violated the Fifteenth Amendment. Promptly after the *Guinn* decision, Oklahoma proceeded to amend its election laws so as to require everyone to register, except all persons who voted in the 1914 elections, which were held while the statute invalidated in *Guinn* was still in effect. The subsequent statute was likewise held to violate the Fifteenth Amendment in *Lane*.

In both *Guinn* and *Lane*, the unreasonable nature of the subterfuge was apparent. The *Guinn* statute had the effect of automatically requiring all Negroes to pass the literacy test, but at the same time exempting even the most illiterate whites. The *Lane* statute continued the evil of the *Guinn* statute by making static its discriminatory effect. Both of these cases are distinguishable from the instant cases, however, for unlike his payment of a poll tax, a voter's race can have no bearing whatever upon his satisfaction of any other elector qualifications, and it is thus impossible to find any justification in fact for a substitute for race, outlawed in all elections as a condition of voting by the Fifteenth Amendment.

Furthermore, it is to be noted that the statutes in question in the *Lane* and *Guinn* cases were both intrinsically unreasonable. If the object of the statute involved in *Guinn* was to insure that all voters could read and write, there was absolutely no foundation or explanation at all (other than prohibited racial discrimination) for the exemption of de-

scendants of persons qualified to vote on January 1, 1866; that is, white persons to the absolute exclusion of Negroes, for such descendants could well be illiterate. If in *Lane* the object of registration was to insure that all voters possessed the then required elector qualifications, there was likewise no foundation or explanation for the exemption of persons who had voted in the elections held in 1914 (except to freeze the discrimination practiced under the statute invalidated in *Guinn*), for such persons could well have become unqualified since that date. Both statutes were thus intrinsically unreasonable, even without reference to the racial discrimination they were manifestly intended to promote or preserve.

But the Statutes Involved in the present cases contain no such self-defeating exemptions, and it is this quality—their lack of intrinsic unreasonableness—that finally distinguishes them from the statute invalidated in *Gray* v. *Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964), which the Government has made the keystone of its argument. In the *Gray* case, the court held to be a violation of the Twenty-fourth Amendment a Mississippi statute which required voters who were exempt from the state poll tax requirement by virtue of the Amendment to obtain and present in each election in which they sought to vote poll tax receipts stamped "Poll Taxes Not Paid." The claimed justification for the statute was that the information contained in the receipts was necessary to enable election officials to determine whether a person offering to vote without paying his poll taxes was otherwise qualified under Mississippi law. But as the court pointed out, other persons exempted by state law from poll tax payment were required only to obtain a permanent certificate of exemption, which would suffice for all elections thereafter. The challenged statute thus belied its ostensible purpose,

since persons exempted by state law were at least as likely to become unqualified as persons exempted by federal law, yet only the latter were required to supply in each election the information asserted to be a necessity by the state. The statute was thus intrinsically unreasonable; it could not be justified or explained except as a deliberate hindrance to the federal voter seeking to exercise his Twenty-fourth Amendment rights, and it was therefore held unconstitutional.

It is in this crucial respect that the Mississippi statute differs from the Statutes Involved in these cases. There are no self-defeating exceptions in the present Statutes, for voters exempted under either state or federal law from payment of poll taxes must file the certificate in order to prove their continuing satisfaction of Virginia's residence requirements.

Thus, the cases cited by the Government leave this Court perfectly free to adopt an interpretation of the Twenty-fourth Amendment which the Appellants believe is most consistent with reason and practicality. To reiterate, this interpretation is that a necessary substitute for the evidentiary function of poll tax payment should be struck down under the Twenty-fourth Amendment only if it is intrinsically unreasonable; that is, self-defeating by its own terms and thus inexplicable except as a barrier to the federal voter, or extrinsically unreasonable; that is, so oppressively burdensome as to be similarly inexplicable except as such a barrier. The Appellants have already shown Virginia's need for the certificate of residence provided for in the Statutes Involved; and they have also shown that the requirement that the certificate be filed by nonpayers of the poll tax can by no means be called a self-defeating measure. It remains only to be shown that the certificate requirement does not impose an unreasonable burden upon those voters who may choose to prove their residence by filing it.

E. The Statutes Involved Do Not Create an Unreasonable Burden on Those Who Do Not Pay Poll Taxes.

The Appellants take serious exception to the Government's unsupported assertion (Amicus Brief, pages 12-13) that they "do not deny that the new residence certificate alternatively required of federal electors amounts to a substantial requirement." If by "substantial requirement" the Government means a substantive, as distinguished from a procedural requirement, then the assertion contradicts the position taken by the Appellants from the date these cases were instituted in the court below. For if the certificate were such a substantive requirement, it would be an elector "qualification" invalid under the Virginia Constitution, and it has always been the Appellants' view that the certificate is not a "qualification" of any kind. If by "substantial requirement" the Government means that the certificate is an unreasonable, oppressive and cumbersome method of proving residence, the effect of which is to force all prospective voters into proving residence by paying their poll taxes, the Appellants now deny it and will proceed to demonstrate that the contrary is in fact the case.

The Government's argument that obtaining, completing and filing the certificate of residence would be as a practical matter an unreasonable, oppressive and "cumbersome" procedure rings hollow when Virginia's experience under her laws applicable to absent voters (*Va. Code* Tit. 24, ch. 13) and to voters absent in the armed services (*Va. Code* Tit. 24, ch. 13.1) is taken into consideration. Both classes of voters must "take the initiative" in order to obtain their official ballots. Official application forms for absentee ballots are

distributed to the local registrars, see *Va. Code* § 24-320, and it is up to absent voters to obtain such forms, see *Va. Code* §§ 24-321,-322, to complete them in the manner provided in *Va. Code* § 24-324 (which requires a witnessed statement by the absentee voter), and, when absentee ballots are received by them pursuant to their filing of such applications, to have their casting of such ballots notarized as required by *Va. Code* §§ 24-333,-334 and to vouch and have notarized as well their own compliance with the applicable provisions of the law, see *Va. Code* § 24-332,-334. Similarly, voters absent in the armed services must apply themselves for their official ballots, stating minimally the information required by *Va. Code* § 24-345.5, and, upon casting their ballots, they must complete the certificate provided for in *Va. Code* § 24-345.7 (which served as a model for the certificate of residence presently being challenged) and must swear before a commissioned officer to the veracity of the statements contained therein. The procedures applicable to the exercise of the franchise by absent voters and voters absent in the armed services are to be contrasted with the procedures applicable to the nonpayer of poll taxes, which are elementally simple in comparison. Yet Virginia's experience for many years under the absent voter and absent serviceman voter laws has been that the "cumbersome" procedures established thereby have not deterred any qualified elector from casting his ballot. Actually, as is self-evident upon any unbiased reading of the Statutes Involved, the certificate of residence is at once the simplest and most comprehensive substitute method of proving residence that could have been devised.

The Government also appears to argue that completing the official certificate form printed for dissemination to local

election officers (a specimen is filed as Def. Ex. 35) pursuant to *Va. Code* § 24-28.1 (R. 10-11) is the only acceptable means of complying with the certificate requirement. Amicus Brief, pages 11-12. This is plainly not so. All that is necessary is that the prospective voter file a certificate "substantially" in the statutory form. Thus, the voter may type or write out his own certificate and it will be accepted, so long as it contains the essential information and complies with the statute in other respects. He need never apply for an official form at all.[7]

The Government also asserts that the six months' cut-off date for filing of the certificate (also applicable to poll tax payment) constitutes an unjustifiable and "most serious obstacle" to the non-payer of poll taxes. The Appellants submit that this assertion reflects a regrettable lack of understanding of the Virginia election laws.

Primary elections in Virginia are held in July, four months before the November general elections. *Va. Code* § 24-349(a). But to be eligible to vote in the primaries, voters must be eligible to vote in the general elections for which the primaries are held. See *Va. Code* § 24-367. Thus, in order to vote in July, a voter must possess as of the date of the November elections the residence qualications contained in Section 18 of the Constitution of Virginia. It would

[7] It is to be noted that this is another factor distinguishing the Statutes Involved from the Mississippi statute held unconstitutional in *Gray* v. *Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964), discussed previously. As the court pointed out, *id.* at 746, the Mississippi statute provided that the specially marked poll tax receipts, which had to be obtained by federal exemptees ostensibly to supply the state with necessary information, could be obtained only from local sheriffs—whose disinclination to collect qualifying poll taxes from certain classes of prospective voters had previously been the subject of judicial inquiry. See *United States* v. *Dogan*, 314 F. 2d 767 (5th Cir. 1963).

therefore plainly be an exercise in futility insofar as the primary election is concerned to require proof in November that such qualifications exist. Thus, the cut-off date for the submission of proof of residence, to make such proof of any use at all in the primaries, had to be positioned at least four months prior to the November elections. But in addition, some time had to be allotted for compiling, posting at the voting places and correcting the lists of persons who had proved their residence before such lists could be employed in the primaries. This time is allotted in *Va. Code* §§ 24-120 (compilation in May); 24-121 and 24-123 (posting and correction in June) (R. 13, 14-15).

The effect of these statutory provisions has been that substantially the same electorate that nominated the candidates by primary in July is eligible to vote for such candidates in the general elections held in November. It is thus apparent that, far from being a device intended by the "poll tax regime" to inveigle prospective voters into sleeping on their rights, the cut-off date, which the Government holds to be such a dreadful iniquity, is reasonably necessary in order to make the requirement of proof of residence have any practical utility for primary elections held in July, which, as this Court has repeatedly observed, are frequently as important as the general elections held in November. *E.g.*, *United States* v. *Classic*, 313 U.S. 299, 319 (1941). The political campaigns which may and usually do determine the outcome of the November general elections are thus not dormant, as the Government argues, at the time of the deadline for filing proof of residence; on the contrary, they are then most active. Prospective voters who are "eliminated" by the deadline are accordingly not "eliminated" by a surreptitious statute, but by their own disinterest or apathy, to which no

reasonable election law may cater. And the implications found in the Amicus Brief that the entire election laws of Virginia constitute some sort of unreasonable scheme to restrict voting are entirely unwarranted and unsupported by any facts.

CONCLUSION

In conclusion, the Appellants would point out to this Court that these cases are the first to arise under the Twenty-fourth Amendment. It is a cardinal principle of construction that if any interpretation can save a statute, that interpretation must be adopted. Yet the Government seeks an interpretation designed to destroy, rather than to save. The Government has invited this Court to make its initial interpretation of the Amendment a dogmatic and inflexible rule that would effectively deprive the few states in which the poll tax has had a practical, evidentiary function in addition to its function as a voter qualification from ever devising any substitute for the former function, no matter how objectively reasonable or necessary the substitute may be. The Government's proposed interpretation, we submit, would have exceedingly harsh and impractical results in that it would strip the affected states of a power which, so far as the legislative history of the Twenty-fourth Amendment discloses, they were not intended to be deprived of. Also, this interpretation is not compelled by any prior decisions of this or any other Court. Therefore, this Court should hold that if a state's substitute for the poll tax is reasonably necessary to the proper working of its election laws, and the substitute is not intrinsically or extrinsically unreasonable, then such substitute is not unlawful under the Twenty-fourth Amendment. As the Statutes Involved clearly are within the class of state

activity which ought thus to be permitted under the Amendment, being necessary and neither self-defeating nor unreasonably burdensome, they should be sustained by this Court.

Respectfully submitted,

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February 17, 1965

PROOF OF SERVICE

I, Richard N. Harris, one of the attorneys for the Appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17th day of February, 1965, I served copies of the foregoing Reply Brief for the Appellants to the Brief for the United States as Amicus Curiae on the several Appellees hereto and on the United States by mailing same in duly addressed envelopes, with first-class postage prepaid to the respective attorneys of record for the Appellees and the attorneys for the United States as follows: H. E. Widener, Jr., Esq., Widener & Widener, Attorneys at Law, Reynolds Arcade Building, Bristol, Virginia; L. S. Parsons, Jr., Esq., Parsons & Powers, Attorneys at Law, Maritime Tower, Norfolk, Virginia, counsel of record for the Appellees; Honorable Archibald Cox, Solicitor General of the United States, Washington, D.C.; Honorable Burke Marshall, Assistant Attorney General of the United States, Department of Justice, Washington, D.C.; Honorable Louis F. Claiborne, Assistant Attorney General, Department of Justice, Washington, D. C., counsel for the United States.

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